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HOUSE BILL 2681

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State of Washington

52nd Legislature

1992 Regular Session

By Representatives J. Kohl, Brumsickle and Fraser; by request of  
Department of Revenue

Read first time 01/23/92. Referred to Committee on Revenue.

1 AN ACT Relating to the payment of refunds for overpaid taxes;  
2 amending RCW 82.32.050, 82.32.060, and 82.32.100; and providing an  
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 82.32.050 and 1991 c 142 s 9 are each amended to read  
6 as follows:

7 (1) If upon examination of any returns or from other information  
8 obtained by the department it appears that a tax or penalty has been  
9 paid less than that properly due, the department shall assess against  
10 the taxpayer such additional amount found to be due and shall add  
11 thereto interest at the rate of nine percent per annum from the last  
12 day of the year in which the deficiency is incurred until the date of  
13 payment for tax liabilities arising before January 1, 1992. For tax  
14 liabilities arising after December 31, 1991, until the date of payment,

1 the rate of interest shall be variable and computed as provided in  
2 subsection (2) of this section. The rate so computed shall be adjusted  
3 on the first day of January of each year. The department shall notify  
4 the taxpayer by mail of the additional amount and the same shall become  
5 due and shall be paid within thirty days from the date of the notice,  
6 or within such further time as the department may provide.

7 (2) For the purposes of this section, the rate of interest to be  
8 charged to the taxpayer shall be an average of the federal short-term  
9 rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points.  
10 The rate shall be computed by taking an arithmetical average to the  
11 nearest percentage point of the federal short-term rate, compounded  
12 annually, for the months of January, April, July, and October of the  
13 immediately preceding calendar year as published by the United States  
14 secretary of the treasury.

15 (3) No assessment or correction of an assessment for additional  
16 taxes, penalties, or interest due may be made by the department more  
17 than four years after the close of the tax year, except (a) against a  
18 taxpayer who has not registered as required by this chapter, (b) upon  
19 a showing of fraud or of misrepresentation of a material fact by the  
20 taxpayer, or (c) where a taxpayer has executed a written waiver of such  
21 limitation. The execution of a written waiver shall also extend the  
22 period for making a refund or credit as provided in RCW 82.32.060(2).

23 **Sec. 2.** RCW 82.32.060 and 1991 c 142 s 10 are each amended to read  
24 as follows:

25 (1) If, upon receipt of an application by a taxpayer for a refund  
26 or for an audit of the taxpayer's records, or upon an examination of  
27 the returns or records of any taxpayer, it is determined by the  
28 department that within the statutory period for assessment of taxes,  
29 penalties, or interest prescribed by RCW 82.32.050 ((a)) any amount of

1 tax, penalty, or interest has been paid in excess of that properly due,  
2 the excess amount paid within, or attributable to, such period shall be  
3 credited to the taxpayer's account or shall be refunded to the  
4 taxpayer, at the taxpayer's option. Except as provided in subsection  
5 (3) of this section, no refund or credit shall be made for taxes,  
6 penalties, or interest paid more than four years prior to the beginning  
7 of the calendar year in which the refund application is made or  
8 examination of records is completed.

9 (2) The execution of a written waiver under RCW 82.32.050 or  
10 82.32.100 shall extend the time for making a refund or credit of any  
11 taxes paid during, or attributable to, the years covered by the waiver  
12 if, prior to the expiration of the waiver period, an application for  
13 refund of such taxes is made by the taxpayer or the department  
14 discovers a refund or credit is due.

15 (3) Notwithstanding the foregoing limitations there shall be  
16 refunded or credited to taxpayers engaged in the performance of United  
17 States government contracts or subcontracts the amount of any tax paid,  
18 measured by that portion of the amounts received from the United  
19 States, which the taxpayer is required by contract or applicable  
20 federal statute to refund or credit to the United States, if claim for  
21 such refund is filed by the taxpayer with the department within one  
22 year of the date that the amount of the refund or credit due to the  
23 United States is finally determined and filed within four years of the  
24 date on which the tax was paid: PROVIDED, That no interest shall be  
25 allowed on such refund.

26 (4) Any such refunds shall be made by means of vouchers approved by  
27 the department and by the issuance of state warrants drawn upon and  
28 payable from such funds as the legislature may provide. However,  
29 taxpayers who are required to pay taxes by electronic funds transfer

1 under RCW 82.32.080 shall have any refunds paid by electronic funds  
2 transfer.

3 (5) Any judgment for which a recovery is granted by any court of  
4 competent jurisdiction, not appealed from, for tax, penalties, and  
5 interest which were paid by the taxpayer, and costs, in a suit by any  
6 taxpayer shall be paid in (~~like~~) the same manner, as provided in  
7 subsection (4) of this section, upon the filing with the department of  
8 a certified copy of the order or judgment of the court. Except as to  
9 the credits in computing tax authorized by RCW 82.04.435, interest at  
10 the rate of three percent per annum shall be allowed by the department  
11 and by any court on the amount of any refund, credit, or other recovery  
12 allowed to a taxpayer for taxes, penalties, or interest paid by the  
13 taxpayer before January 1, 1992. For refunds or credits of amounts  
14 paid or other recovery allowed to a taxpayer after December 31, 1991,  
15 the rate of interest shall be the rate as computed for assessments  
16 under RCW 82.32.050(2), less one percentage point.

17 **Sec. 3.** RCW 82.32.100 and 1989 c 378 s 21 are each amended to read  
18 as follows:

19 (1) If any person fails or refuses to make any return or to make  
20 available for examination the records required by this chapter, the  
21 department shall proceed, in such manner as it may deem best, to obtain  
22 facts and information on which to base its estimate of the tax; and to  
23 this end the department may examine the (~~books,~~) records(~~, and~~  
24 ~~papers~~) of any such person (~~and may take evidence, on oath, of any~~  
25 ~~person, relating to the subject of inquiry~~) as provided in RCW  
26 82.32.110.

27 (2) As soon as the department procures such facts and information  
28 as it is able to obtain upon which to base the assessment of any tax  
29 payable by any person who has failed or refused to make a return, it

1 shall proceed to determine and assess against such person the tax and  
2 any applicable penalties or interest due, but such action shall not  
3 deprive such person from appealing ~~((to the superior court as~~  
4 ~~hereinafter provided. To the assessment the department shall add the~~  
5 ~~penalties provided in RCW 82.32.090))~~ the assessment as provided in  
6 this chapter. The department shall notify the taxpayer by mail of the  
7 total amount of such tax, penalties, and interest, and the total amount  
8 shall become due and shall be paid within thirty days from the date of  
9 such notice.

10 (3) No assessment or correction of an assessment may be made by the  
11 department more than four years after the close of the tax year, except  
12 ~~((+1))~~ (a) against a taxpayer who has not registered as required by  
13 this chapter, ~~((+2))~~ (b) upon a showing of fraud or of  
14 misrepresentation of a material fact by the taxpayer, or ~~((+3))~~ (c)  
15 where a taxpayer has executed a written waiver of such limitation. The  
16 execution of a written waiver shall also extend the period for making  
17 a refund or credit as provided in RCW 82.32.060(2).

18 NEW SECTION. Sec. 4. (1) This act shall take effect July 1,  
19 1992.

20 (2) This act is effective for all written waivers that remain  
21 enforceable as of July 1, 1992.